

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON DESIMAS and DANIEL  
DELBERT DORSON,

Defendants.

NO. CR20-222-RAJ

ORDER CONTINUING  
TRIAL DATE AND PRETRIAL  
MOTIONS DEADLINE

THIS MATTER comes before the Court upon Defendant Daniel Delbert Dorson's Motion to Continue Trial Date and Pretrial Motions Deadline. Dkt. 48. Trial in this matter is currently scheduled for March 1, 2021. On December 30, 2020, Chief Judge Martinez issued General Order 18-20 in response to the continuing outbreak of Coronavirus Disease (COVID-19) in this District. The General Order noted that the significant increase in the daily number of positive cases, hospitalizations, and deaths "has foreclosed the possibility of further increasing the number and type of in-court proceedings" and explained further as follows:

A statewide vaccination effort has begun, with the first doses going to "Phase 1A" groups, which include frontline health workers and long-term care residents and staff. The distribution of the vaccine to other members of the general public is anticipated to proceed in phases through the coming months. At this time, it appears likely that the majority of individuals with business in the Courthouses, including potential jurors, will not be fully vaccinated before March 31, 2021. Limiting the size and frequency of gatherings remain critical to preventing serious injury and death from COVID-19.

1 Accordingly, General Order 18-20 continued all “criminal in-person hearings and  
 2 trials...scheduled to occur before March 31, 2021...pending a future general order from this  
 3 Court or the order of an individual judge consistent with the procedures set forth in General  
 4 Order 15-20.”

5 On January 5, 2021, Washington Governor Jay Inslee issued a new set of restrictions  
 6 that replaced the prior COVID-related restrictions in Washington that were in effect between  
 7 early November 2020 and January 11, 2021. Governor Inslee’s “Healthy Washington –  
 8 Roadmap to Recovery” is a two-phased recovery plan that took effect on January 11, 2021  
 9 and divided the state into eight geographic regions. Health metrics determine whether each  
 10 region must remain in Phase 1 with strict limitations in place similar to the restrictions  
 11 imposed in November 2020, or whether the region may progress to Phase 2 with slightly less  
 12 restrictive regulations. Even in Phase 2, masks and physical distancing are required  
 13 statewide for all activities.<sup>1</sup> At the current time, none of the eight regions in the state have  
 14 achieved the health metrics required to move from Phase 1 to Phase 2. Thus, indoor social  
 15 gatherings remain prohibited statewide.<sup>2</sup>

16 On January 19, 2021, the Washington State Department of Health (DOH) announced  
 17 that as of January 16, 2021, 42.3% of the total doses of vaccine that have been delivered to  
 18 Washington State had been administered (a total of 294,386 doses). DOH also announced  
 19 that effective immediately it was expanding access to the COVID-19 vaccine to all people  
 20 over the age of 65. Currently all individuals in categories 1A1 and 1A2 (healthcare workers,  
 21 first responders, and long-term care facility residents) and 1B1(all people >70 and all people  
 22 >50 in multigenerational households) are eligible to receive the vaccine. According to  
 23 DOH’s announcement, the State hopes to make vaccines available to individuals in  
 24 categories 1B2, 1B3, and 1B4 in late winter or early spring. Information on who is available  
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26 <sup>1</sup> <https://medium.com/wagovernor/inslee-announces-healthy-washington-roadmap-to-recovery-229b880a6859>.

27 <sup>2</sup> <https://www.doh.wa.gov/Newsroom/Articles/ID/2570/Roadmap-to-recovery-update-All-regions-staying-in-Phase-1-for-now>

1 for future phases (2, 3, and 4) has not yet been released.<sup>3</sup>

2       Given the Court's grave concerns about the safety of the public and the parties and the  
3 current numbers of COVID cases, it is not possible to proceed with a jury trial in this matter  
4 on Monday, March 1, 2021. The safety and health of all involved individuals and the public  
5 is of paramount concern to the Court. Limiting the size and frequency of gatherings remains  
6 critical to preventing serious illness and death from COVID-19. The continuing public  
7 health situation resulting from the pandemic also limits the availability and ability of  
8 witnesses, counsel, and Court staff to be present in the courtroom. Further, because of the  
9 recommendations that individuals at higher risk of contracting this disease – including  
10 individuals with underlying health conditions, individuals age 60 and older, and individuals  
11 who are pregnant – avoid large groups of people, at this time, it would be difficult, if not  
12 impossible, to get a jury pool that would represent a fair cross section of the community.  
13 Based on the recommendations, it would also be medically inadvisable to do so.

14       The Court notes that counsel for Defendant Jason DeSimas do not oppose the  
15 continuance, but that Mr. DeSimas has declined to execute a speedy trial waiver. Dkt. 49.  
16 As a result of the above findings, however, the failure to grant a continuance of the trial date  
17 in this case would likely result in a miscarriage of justice. Pursuant to 18 U.S.C.  
18 § 3161(h)(7)(A), the ends of justice served by continuing the trial in this case outweigh the  
19 best interest of the public and the defendants to a speedy trial.

20       The Court further finds that:

21       (a) taking into account the exercise of due diligence, a failure to grant a continuance  
22 in this case would deny counsel for the defendants the reasonable time necessary for  
23 effective preparation, due to counsels' need for more time to review the evidence, consider  
24 possible defenses, and gather evidence material to the defense, as set forth in 18 U.S.C. §  
25 3161(h)(7)(B)(iv); and

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27 <sup>3</sup> [https://www.doh.wa.gov/Newsroom/Articles/ID/2573/Moving-to-the-next-phase-Vaccine-expansion-plan-meant-to-](https://www.doh.wa.gov/Newsroom/Articles/ID/2573/Moving-to-the-next-phase-Vaccine-expansion-plan-meant-to-accelerate-the-pace-of-vaccinations-statewide)  
28 [accelerate-the-pace-of-vaccinations-statewide and https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/VaccinationPhasesInfographic.pdf](https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/VaccinationPhasesInfographic.pdf)

1 (b) a failure to grant a continuance in this proceeding would likely result in a  
2 miscarriage of justice, as set forth in 18 U.S.C. § 3161(h)(7)(B)(i); and

3 (c) the additional time requested is a reasonable period of delay, as counsel has  
4 requested more time to prepare for trial, to investigate the matter, to gather evidence material  
5 to the defense, and to consider possible defenses; and

6 (d) the additional time requested between the current trial date of March 1, 2021 and  
7 the new trial date is necessary to provide counsel for the defendants the reasonable time  
8 necessary to prepare for trial, considering counsels' schedule and all of the facts set forth  
9 above.

10 IT IS HEREBY ORDERED that the trial in this matter is continued until December 6,  
11 2021, at 9:00 a.m.

12 IT IS FURTHER ORDERED that all pretrial motions, including motions in limine,  
13 shall be filed no later than October 21, 2021.

14 IT IS FURTHER ORDERED that the time between the date of this Order and the new  
15 trial date of December 6, 2021, is excluded in computing the time within which trial must  
16 commence because the ends of justice served by granting this continuance outweigh the best  
17 interest of the public and the defendants in a speedy trial, 18 U.S.C. § 3161(h)(7)(A).

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19 DATED this 1st day of March, 2021.

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22 The Honorable Richard A. Jones  
23 United States District Judge  
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